1851 CENTER FOR CONSTITUTIONAL LAW

October 17, 2014

Glenn Newman
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451 E. Market Street
Tiffin, OH 44883

RE: 2014 Guide to Understanding Ohio Judicial Incumbents' Records

Mr. Newman:

You and your members, along with many others, have requested information about Ohio's two sitting Supreme Court Justices who are up for re-election this fall: Republican Justices Sharon Kennedy and Justice Judith French.

To advance your understanding of theses Justices, and of the Ohio Supreme Court in general, we have prepared the findings below.

I. Introduction

First, we note that these offices are important because state supreme courts are the last line of defense against overreaches by governors, state legislators, and local government officials. Thus, an effective state supreme court can right some of the worst wrong by other elected officials.

And participation in these elections may be particularly effective for your members, since it is estimated that perhaps only 40 percent of those who turn out to vote will actually vote in the judicial races at the bottom of the ballot. As one advocate for judicial reform recently explained "in some cases, judges are being selected by one quarter of eligible voters."

Secondly, we note that the 1851 Center is non-partisan and does not *endorse* candidates. However, because we regularly appear before and analyze the Court, we can provide you with *information* that you are unlikely to find elsewhere.

Below, we provide analysis on (1) each incumbent's voting record on cases featuring issues of constitutional liberty and limited government; and (2) each incumbent's voting record on cases where the interests of the candidate's top campaign donors are before the court.

Finally, we note that we have not considered the challengers' records only because they do not have records that permit straightforward evaluations.

II. Findings as to Justices' Critical "Limited Government" Decisions

We believe that you should evaluate an Ohio judge's performance based upon their rulings, rather than based upon their rhetoric or party affiliation.

Because your organization is interested in liberty, constitutional rights, and limited government, we first considered the foremost constitutional rights, liberty, and limited government cases from the past two years (Justices Kennedy and French have occupied seats on the Court for approximately two years). To this end, we have identified the eight most critical decisions made by the Court since January 1, 2013.

In doing so, we do not consider issues related to criminal procedure, attorney discipline, sentencing or ballot access. We instead focus on civil constitutional and limited government issues relating to property rights, free speech, taxation, government spending, freedom of choice, etc.

Of note, three *significant* matters of principle remain pending before the Court at the time of this memorandum: *Sanborn v. Hamilton County Budget Commission* (whether school districts not in need of funds can raise property taxes without a public vote); *Walker v. Bradley* (whether local automated traffic camera ordinances are unconstitutional because they disallow access to an Ohio judge); and *Northeast Ohio Sewer District v. Bath Township* (whether a local "special district" can impose addition property taxes on homeowners and businesses in response to rain). Favorable rulings in any of these cases would significantly advance either of these Justices statuses, and are therefore worth watching.

Our analysis in Appendix 1 demonstrates that when presented with the opportunity on critical cases of constitutional principle, Justice Kennedy supported religious liberty, free speech, property rights, government transparency, and political association and speech. In the same cases, Justice French opposed these principles. Meanwhile both Justices, when presented with the opportunity, supported unilateral Affordable Care Act Medicaid Expansion by the Governor, supporting forced health care by state hospitals, opposing parental rights to make health care decisions for their children, and opposing citizen-taxpayer standing to enforce the structural limits on government.

This leads us to the following findings regarding **Justice Kennedy**, who was elected to unseat Justice Brown in November of 2012:

- Justice Kennedy ruled in a manner consistent with the protection of constitutional rights, advancement of liberty, and limiting of government in **five of the eight critical cases identified**.

- Justice Kennedy has been highly likely to check abuse by *local* governments when given the opportunity.

- Justice Kennedy has been highly unlikely to check abuse by the executive branch of state government and the powerful hospital lobby, when given the opportunity, and this somewhat differs from her expressed opposition to "government intrusion."

- Justice Kennedy should explain her rulings supporting Affordable Care Act Medicaid Expansion, supporting forced health care, opposing parental rights to make health care decisions for their children, and opposing citizen-taxpayer standing to enforce the structural limits on government.

Our analysis below leads us to the following conclusions regarding **Justice French**, who was appointed by Governor Kasich to replace the retiring Justice Stratton in late 2012:

- Justice French has ruled in a manner consistent with the protection of constitutional rights, advancement of liberty, and limiting of government in **zero of the eight critical decisions identified**.

- Justice French has been highly unlikely to check abuse by state or local governments or powerful interest groups when given the opportunity, and this is consistent with her expressed philosophy of placing her personal views of judicial restraint and majority power above constitutional limits on government.

By way of contrast, *Democrat* Justice William O'Neill, who was elected to displace Justice Cupp at the same 2012 election where Justice Kennedy prevailed, ruled in a manner consistent with the protection of constitutional rights, advancement of liberty, and limiting of government in **five of the eight critical decisions identified**, the same as Justice Kennedy, and five more than Justice French.

Accordingly, we can concluded that Justice Kennedy is as likely as Justice O'Neill to check governmental abuse, while Justice French is far less likely than Justice O'Neill to check governmental abuse.

III. Analysis of how Frequently the Justices Rulings Advance their Top Donors' Interests

We support the concept of judicial elections, alongside the right of citizens to contribute to political campaigns. As such, we have a special responsibility to report information that will permit Ohioans to determine whether this concept is working properly.

Meanwhile, because your organization consists of concerned citizens of average means with "big money" or highly-organized political operations, you have also expressed an interest in how frequently Justices French and Kennedy side with their top campaign contributors.

In making this inquiry, I believe your goal is to ascertain the following: "how easy is it for a concerned citizen to prevail in the Ohio Supreme Court when facing off against special interests who are big contributors to the Justices campaigns?"

The answer: extremely difficult.

First, we tabulated the top 20 contributors to the campaigns of Justices French and Kennedy from the 2012 election cycle through October 13, 2014.[1]

We found that the top contributors to Justice French were insurance companies and their employees, electric utilities and their coal producers, hospital/medical lobbies, and large Ohio law firms.

[1] We a maintain a file of who these contributors are for each Justice, and what their business and/or political interests are. We will freely share this with you.

Meanwhile, the top contributors to Justice Kennedy were, first and foremost, the Ohio Republican Party, which is controlled by Governor Kasich, followed by insurance companies and their employees, medical/hospital lobbies, electrical utilities and coal producers, and large Ohio law firms.

Secondly, we tabulated the number of the times that Justices French and Kennedy's top campaign appeared before them in Court, directly as a named party, *amicus* party, or legal counsel of the named party.

Thirdly, we reviewed all cases since Justice French assumed the bench to determine how frequently Justices French and Kennedy ruled in favor of their top campaign contributors, whether directly, or indirectly.

Finally, we tested the hypothesis that that the alignment of Justices French and Kennedy with their top contributors could be explained away by a shared ideology or philosophy between them and their donors. More specifically, since most of each Justices' contributors are businesses, alignment with these contributors may simply reflect a "pro-business" philosophy. To test this theory, we included large law firms who are non-ideological, and neither "pro" nor "anti" business (many of the firms represent governmental interests).

Our conclusions regarding **Justice French** are as follows:

- Top campaign contributors to Justice French appeared before her, *directly* as parties to the case, *amicus curiae* parties, or legal counsel for parties, on 43 occasions. Justice French ruled in favor of her top contributors on 39 of those occasions, or 91 percent of the time.

- By comparison, fellow Republican Justice Pfeifer, who does not receive large campaign contributions, ruled in favor of Justice French's top contributors in these same instances on only 21 of 41 occasions, or 51 percent of the time.[2]

- By comparison, Democrat Justice William O'Neill, who does not receive large campaign contributions, ruled in favor of Justice French's top contributors in these same instances on only 26 of 43 occasions or 60 percent of the time.

- Justice French ruled in favor of the law firms who made major contributions to her on 22 of the 24 occasions upon which they appeared before here, or 92 percent of the time.

Our conclusions regarding **Justice Kennedy** are as follows:

- Top campaign contributors to Justice Kennedy appeared before her, *directly* as parties to the case, *amicus curiae* parties, or legal counsel for parties, on 41occasions. Justice Kennedy ruled in favor of her top contributors on 36 of those occasions, or 88 percent of the time.

- By comparison, fellow Republican Justice Pfeifer, who does not receive large campaign contributions, ruled in favor of Justice Kennedy's top contributors in these same instances on only 19 of 40 occasions, or 48 percent of the time.[3]

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[2] Justice Pfeifer did not sit in two of the case in which Justice French sat, thus his total, 82, is two less than Justice French's total of 84.

[3] Justice Pfeifer did not sit in two of the case in which Justice French sat, thus his total, 82, is two less than Justice French's total of 84.

- By comparison, Democrat Justice William O'Neill, who does not receive large campaign contributions, ruled in favor of Justice Kennedy's top contributors in these same instances on only 24 of 41 occasions or 59 percent of the time.

- Justice Kennedy ruled in favor of law firms who made major contributions to her on 26 of the 30 occasions upon which they appeared before her, or 87 percent of the time.

We also reviewed cases where the *interests* of top donors were clearly before the court even though the parties themselves were not, so that a certain ruling would result in a rather clear and discrete benefit for the campaign contributor, even if the campaign contributor was not directly participating in the case.[4]

We have determined that including these cases approximately doubles the number of cases reviewed. In these cases, the percentage of occasions upon which Justices French and Kennedy vote in favor of their top contributors is essentially identical to their votes when their contributors are *directly* before the Court. However, we have omitted any conclusions related to these cases to expunge any possible allegation or arbitrariness on our part.

Many of the top contributors, directly or indirectly, appeared before the Court in the critical decisions analyzed above - - particularly on the cases dealing with JobsOhio and taxpayer standing, Medicaid expansion, and health care freedom and parental rights.

While this high level of alignment may be alarming to some, it not the same as an allegation of corruption. There *may* be some other legitimate explanation for this high level of alignment with top contributors and their interests. In the case of law firms, for instance, perhaps those firms who contribute also do an excellent job of arguing cases, or picking clients who are already likely to win.

It could also be that contributors only make their large contributions *after* they win before the Court, out of a sense of gratitude. We tested this hypothesis, and found it to be mostly, though not entirely, untrue.

Also, we did not consider contributions which were large, but not large enough to leave an individual or entity as a top-twenty contributor to either Justice. Likewise, we did not consider independent expenditures made on Justices' behalf, but not directly to their campaigns.

Finally, due to time constraints, we were not able to analyze, for comparison purposes, the rates at which the other five Ohio Supreme Court Justices vote to advance *their own* top contributors' interests.

Justices Pfeiffer and O'Neill do not accept significant campaign contributions. Accordingly, each of their voting records were used as a "control variable" (since to top contributor would not have contributed to either Justice, these Justices votes in favor of the contributor would bolster the merit of Justice French and Kennedy's votes).

Justice O'Connor is up for re-election in 2016, while Justices O'Donnell and Lanzinger are term-limited.

I would advise you to inquire regarding these ratios prior to reaching any conclusions.

[4] We maintain a file of the cases that we analyzed, including the parties and/or interests before the Court in that case.

Should you have any questions or requests, please feel free to contact me by email at MThompson@OhioConstitution.org, or by phone at (614) 340-9817.

Best Regards,

Maurice A. Thompson
Executive Director
1851 Center for Constitutional Law

APPENDIX 1: Analysis on Critical Case Decisions

We have provided analysis of the eight critical cases below, along with the conclusions that can be drawn regarding each Justice from the case. We have not arranged the cases in order of important. Instead, we have placed the five cases differentiating Justices Kennedy and French first, while three cases of great magnitude upon which the two Justices concurred with one another appear at the end.

ISSUE 1 - Religious Liberty: ***Justice Kennedy ruled in favor of open debate and religious liberty. Justice French ruled against these rights and principles.***

In a recent 4-3 decision, the Court dealt with the free exercise clause of the First Amendment within the context of a public school science teacher who had been fired for keeping a Bible on his desk, and challenging students on ideas of both creationism and evolution. A majority of Justices O'Connor, **French**, O'Neill, and Lanzinger reached the seemingly intractable conclusion that (1) the teacher maintained a constitutional right to keep a Bible on his desk; however (2) the teacher could be terminated for "insubordination" for exercising that right by refusing to remove the Bible, upon the principal's request.[5] The majority attempted to avoid the constitutional issue by holding that the teacher could be fired for the "insubordination" of refusing to remove the Bible and a few other religious materials, irrespective of whether he maintained a constitutional right to display those materials in the classroom.[6] The majority expressly concluded that "the First Amendment protected Freshwater's conduct," but then concluded that the school had a legitimate justification for preventing that conduct.[7]

Justice Lanzinger further sought to explain the majority decision by stating "I would hold that the school district's order that John Freshwater put away his personal Bible while students were present was a reasonable and valid attempt to avoid an Establishment Clause violation. That order did not infringe on Freshwater's free speech rights, for he was not required to remove the Bible from the classroom—merely putting the book into a desk drawer during class time would have sufficed. . . . In my view, Freshwater disobeyed a reasonable order by incorporating the Bible by reference while teaching in his science classes and displaying the book on his desk while students were present."[8]

This paradoxical ruling drew sharp rebuke from the three dissenting Justices - - Pfeiffer, **Kennedy,** and O'Donnell. Justice Pfeiffer's dissent noted that Justice O'Donnell's dissent "goes unrebutted," and maintained that "in a case bounding with arrogance and cowardice, the lead opinion fits right in."[9]

Justices Kennedy and O'Donnell wrote as follows:

> "[t]he right of free speech of public school teachers and their students and the freedom of a public school teacher to select and utilize teaching materials and methods to effectively present the prescribed school curriculum are the core issues in this case. It involves a veteran science teacher singled out by the Mount Vernon City School District Board of Education because of his willingness to challenge students in his science classes to think critically about evolutionary theory and to permit them to discuss intelligent design and to debate creationism in connection with the presentation of the prescribed curriculum on evolution. . . . the school board violated Freshwater's First Amendment rights when it terminated his contract based on its belief that he failed to adhere to the curriculum and that he was instead teaching creationism and intelligent design."[10]

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5 See *Freshwater v. Mt. Vernon City School District Board of Education*, 2013-Ohio-5000.
6 Id.
7 Id.
8 Id., Lanzinger, concurring.
9 Id., Pfeiffer, dissenting.
10 Id., O'Donnell, dissenting.

ISSUE 2 - Free Speech and Over-Criminalization: ***Justice Kennedy ruled in favor of free speech and against over-criminalization. Justice French ruled against free speech and in support of over-criminalization.***

In another contentious free speech case, the Court struck down, 5-2 Ohio's "child enticement statute." The statute prohibited any person from "soliciting" a child under the age of 14 to accompany him or her without the express or implied permission of the parent.[11] **Justice Kennedy** and O'Neill joined Justices Lanzinger, Pfeiffer, and O'Donnell in concluding that by "reaching a substantial amount of constitutionally protected speech and associations, the statute goes far beyond its intended purpose of protecting children," and it was therefore unconstitutionally overbroad and facially unconstitutional.[12] The Court explained that "solicitation," is speech, and that purely innocent speech, such as an elderly woman attempting to hire a neighbor child to clean her gutters or mow her lawn, would subject her to criminal penalties.

Justices French and O'Connor, however, vigorously objected to the ruling. First, they argued that the statute should remain intact because, despite relatively settled First Amendment precedent on the issue, "solicitation" is not "protected speech."[13] Further, the two asserted, the Court should have altered the meaning of "solicit" to "avoid a finding of overbreadth" and uphold the statute.[14] This broaches the issue, of course, raised to prominence by Chief Justice John Roberts' use of a savings construction to uphold the Affordable Care Act in 2012, of whether courts should alter the meaning of statutes to uphold them.

Perhaps ironically, three of the Court's Justice seem to not maintain a compass on this matter. Just months earlier, in another 5-2 decision in a First Amendment case, the majority of the court employed a narrowing construction to uphold regulations requiring ten days of notice prior to labor union picketing.[15] **Justice Kennedy**, O'Donnell, and Pfeiffer *joined* Justice O'Connor and **French** in that holding. Meanwhile, Justices Lanzinger and O'Neill could be viewed as maintaining their consistency on the issue - - they would have struck down the statute as an unconstitutional prior restraint.[16]

ISSUE 3 - Political speech and Association for grass-roots Ohio groups: ***Justice Kennedy ruled to review the Appellate Court's misguided ruling that all politically-oriented groups must register with the state. Justice French ruled against free speech and association by ruling that the high court's review was not warranted.***

The question of whether the Court should hear a case at all, i.e. whether the case raises a "substantial constitutional question" or "issue of great public importance or interest" often divide the Court. But this questions is as important as how a judge rules on the merits: refusing to review a bad ruling essentially rubber-stamps that ruling and strengthens its precedential value.

In *Corsi v. Ohio Elections Commission*, the Court ruled 4-3 against hearing a challenge to Ohio's Political Action Committee regulations in a context where they were applied to silence a political blogger who spent no money on elections, but simply criticized local officials on his blog and handed out pamphlets criticizing local officials at a county fair.[17] Justices O'Neill, O'Connor, and **Kennedy** would have taken the case, while Justices Pfeiffer, **Fench,** Lanzinger, and O'Donnell essentially voted - - by voting not to accept the appeal of the lower court's

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11 *State v. Romage*, 2014-Ohio-783 (2014). The statute at issue was R.C. 2905.05(A).

12 Id.

13 Id., French and O'Connor, dissenting. The United States Supreme Court has repeatedly confirmed, in various context, that "solicitation" is "protected speech." See, *inter alia*, *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*,487 U.S. 781, 789, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988).

14 Id.

15 *Mahoning Education Association of Developmental Disabilities v. State Employment Relations Board*, 2013-Ohio-4654 (2013).

16 Id., Lanzinger and O'Neil dissenting.

17 See *Corsi v. Ohio Elections Commission*, 2012-ohio-4831.

ruling - - to uphold the lower court's incorrect application of Ohio PAC regulations (reporting and registration requirements) to the blogger, as against his free speech challenge.

The Ohio Liberty Coalition filed an *amicus* brief in this case, since the Tenth District's ruling greatly squelched and further threatens the political activity of Ohio "liberty groups," even when those groups are not involved with candidates.

ISSUE 4 - Property Rights: ***Justice Kennedy ruled in favor of private property rights. Justice French ruled against private property rights.***

An important but often over-looked issue is the extent to which the Court protects Ohioans from regulations prohibiting certain peaceful uses of their property. In late 2013, in another 4-3 decision, a majority concluded that the landowners there had a vested right in the buildable nature of their lot.[18]

The majority, consisting of Justices O'Neil, **Kennedy**, O'Donnell, and Pfeiffer held that the plaintiff landowner was entitled to build on his 33,000 square foot residential lot, despite a village ordinance prohibiting building on any lot smaller than 35,000 square feet.[19]

The majority explained that "when the lot was purchased in 1974, the minimum buildable lot size was 15,000 square feet," further, "it is undisputed that other landowners in the village built homes on lots smaller than 35,000 square feet subsequent to the 1978 change in zoning regulations," and finally "if we were to accept the village's argument. . . landowners in Ohio would hold title to vacant land at their own peril subject to governmental regulations that can change overnight. This result would eliminate the constitutional protections that people must be afforded with respect to their own private property.[20]

This ruling would appear to bring the Court's protection of private property rights against regulatory interference more in line with what the Ohio Constitution envisions, while capitalizing on the Court's 2006 promise that private property rights would be treated as "fundamental rights."[21] The decision is also a welcome retreat from the notion of an all powerful state police power, and a welcome departure from a federal regulatory takings test that has proven to be unworkable in practice.

Nevertheless, **Justices French**, O'Connor, and Lanzinger posited a strenuous dissent, claiming that "the majority sidesteps well-established principles for determining when a regulatory taking occurs and when vested right exist."[22] Indeed, the majority may well have implicitly recognized the shortcomings of some of the Court's prior precedents, and made a decision to depart from these precedents, since they were not strictly tethered to the Ohio Constitution.

ISSUE 5 - Government Transparency: ***Justice Kennedy ruled in favor of open, transparent, and accountable government. Justice French ruled against open, transparent, and accountable government.***

In *State ex rel. DiFranco v. South Euclid*, the Court dealt a significant setback to open and transparent government, with a majority of the justices ruling that a citizen-plaintiff could not recoup his attorneys fees in bringing an action forcing a defiant local government to produce public records, so long as the local government produced the records after a lawsuit for the records has been filed against it, but just before the Court formally

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18 *Boice v. Village of Ottawa Hills*, 2013-Ohio-4769.

19 Id.

20 Id.

21 See Sections 1 and 19, Article I of the Ohio Constitution, and *Norwood v. Horney*, 2006-Ohio-3799.

22 *Boice*, supra. Lanzinger, French, and O'Connor dissenting.

orders production of the records.[23] Even more concerning is that the Court denied attorneys fees to the citizen in this case even though the Court *arguably did in fact order production of the public records,*[24] thus seemingly defying their own newly established rules.

Justice French ruled with the majority in this case.

In *DiFranco*, the City of Euclid delayed for months in responding to public records request, only responding after the citizen initiated a lawsuit, and even altogether denied the existence of certain records until the citizen hired an expert to prove otherwise.

In a solo dissent, **Justice Kennedy** correctly analyzed the language of the applicable statute, and then explained the importance of the majority's misruling in light of the purposes of public records requirements:

> "the majority's construction defeats the evident purpose of adding the mandatory-fee provision to the statute: ensuring an award of fees when the records custodian has unreasonably delayed the production of records. If no fees could be awarded unless the court had ordered a party to produce records, it would allow a public office to sit on a public-records request until a mandamus case was filed and then turn over the records before the court had a chance to issue an order. It would thereby prevent a requester from obtaining records within a reasonable time, while the public office would escape liability for attorney fees altogether, even though it would probably have violated division (C)(2)(b)(i) by failing to respond affirmatively or negatively to the request within a reasonable time. For these reasons, I would hold that mandatory fees are to be imposed if the public office's conduct falls within R.C. 149.43(C)(2)(b)(i) or (ii), whether or not the court has ordered the production of the records."[25]

In a companion case filed on the same day, Justice Kennedy further elaborated: "Like No. 2012–1704, this case involves unreasonable conduct by South Euclid . . . By denying the fees, the court again defeats the purpose of mandatory fees: to make the requester whole when unreasonable delay has necessitated litigation. I respectfully dissent."

<u>ISSUE 6 - Health Care Freedom and Parental Rights</u>: *Both Justices Kennedy and French ruled in a manner hostile to parental rights and health care freedom.*

The Court recently voted 4-3 to *not* determine a high-profile parental rights case featuring the question of whether an Amish girl could be taken from her suitable and non-abusive parents and forced by government to submit to extensive chemotherapy treatments that the family observed to be killing her.[26]

In that case, the trial judge had refused to establish a guardianship for the child, citing the parents' constitutional rights to control the upbringing of their child. However, the Court of Appeals for the Fifth District overruled the Court, and refused to hear the constitutional issue.[27]

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23 *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d 367, 7 N.E.3d 1136, 2014 -Ohio- 538 (2014).

24 Id., at Paragraph 34("To be sure, it could be argued that the court's July 3, 2012 order might satisfy the condition, inasmuch as it ordered production of any responsive documents that had not yet been produced. But the July 3 order probably cannot qualify as a "judgment," since that order is interlocutory and does not dispose of the case.")

25 Id., at Paragraphs 42, 43.

26 See *In re Guardianship of S.H.*, 2013-Ohio-1778.

27 See 2013-Ohio-4380.

In refusing to hear the Appeal, the Court left in place a decision (1) claiming all Ohio children to be the property of the State; (2) that children could be taken from suitable parents any time that a court found it to be in the "best interests" of the child; and (3) declaring state government to be the primary parents of all Ohio children.[28]

Justices O'Connor, O'Neil, and O'Donnell would have heard the case, while **Justices French**, Pfeiffer, Lanzinger, and **Kennedy** voted to uphold the Appellate Court's misguided ruling.

Notably, the Court ignored the Ohio Health Care Freedom Amendment, as well as unmistakably clear parental rights precedent from the United States Supreme Court (each was brought to the Court's attention twice).

ISSUE 7 - Taxpayer Standing and Cronyism: ***Justice Kennedy and Justice French ruled that Ohio citizens and taxpayers no longer maintain legal standing to enforce structural limits on government explicated in the Ohio Constitution (limiting spending, indebtedness, and cronyism limits), rendering those limits unenforceable.***

In the wake of the decision authored by **Justice French** in *ProgressOhio v. JobsOhio,* all manner of importantly structural constitutional limits on government are potentially now unenforceable - - from the balanced budget requirement and the prohibition on special subsidies and privileges to the requirements that all legislative bills contain only one subject and be applied uniformly to all.[29]

This is because under the Court's new docrtine, no citizen has a "personal stake different from that of the general public," as is now required, to challenge government actions that violate these structural limits.

Although critical of the decision's reasoning, **Justice Kennedy** ultimately concurred in the judgment, while asking rhetorical questions such as "But who could meet the justiciability requirement, because cases filed in a common pleas court require a concrete injury?" and expressing "it is unclear how a party would have standing to challenge the constitutionality of the JobsOhio legislation."

The dissents of Justices Pfeiffer and O'Neill in *ProgressOhio* accurately address the magnitude of the question decided by the court and speak volumes as to the extent of the majority's effort to shield government spending and cronyism from constitutional review. Several of those quotes are excerpted below:

> [T]he majority characterizes the JobsOhio legislation as not rising to the level of importance that a public-right case requires. . . . Many of the claims brought by appellants involve Articles VIII and XIII of the Ohio Constitution. Those provisions were enacted in response to the issues that generated the call for a constitutional convention in 1850–1851, the convention that created the Constitution of 1851, which is the bedrock of Ohio law; it has been amended but remains our foundational document.
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> The issues appellants raise concern the structure of government rather than individual rights. The fact that those issues do not lead to an injury to an individual should not prevent this court from ensuring that the principles and requirements of those constitutional provisions are maintained. By doing so, we implicitly recognize the standing of our founders. This court bears a responsibility to today's citizens and to the framers to answer the questions appellants pose.
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> Today, we slam the doors on all those courthouses, denying Ohioans the opportunity to discover whether their government has been true to the Constitution.
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[28] Id.

[29] *ProgressOhio.org, Inc. v. JobsOhio,* 139 Ohio St.3d 520, 13 N.E.3d 1101, 2014 -Ohio- 2382 (2014).

> Hundreds of millions of dollars in public funds are being funneled into a dark hole to be disbursed without public scrutiny, and the highest court in the land is looking the other way. The Supreme Court of Ohio is the last house on the street, and passing on this case is an abdication of our duty as protectors of the Constitution.
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> The risks presented by the court's failure to act today are obvious, preventable, and unnecessary. They are obvious, because it is alleged that hundreds of millions of taxpayer dollars are being spent in direct violation of the Ohio Constitution. . . Maybe this new-era form of governmental accountability does not violate Ohio's Constitution. But unless we examine the issue, the people of Ohio will never have an answer to that question. It is simply shameful that the court has refused to do its job.
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> Today's ruling brings the triumph of form over substance to a whole new level. . . What we are doing here is simply wrong.

ISSUE 8 - ACA Medicaid Expansion and Executive Authority: ***Justice Kennedy and Justice French ruled against key separation of powers principles, and in favor of the Governor's unilateral expansion of Medicaid spending in Ohio.***

In *State ex rel. Cleveland Right to Life v. State of Ohio Controlling Board,* the Court issued a fractured decision with a three judge majority. consisting of Justices O'Neill, Pfeifer, and O'Connor, upholding Governor Kasich's unilateral expansion of Obamacare Medicaid spending through the Controlling Board, even after the Ohio General Assembly had enacted legislation prohibiting the expansion.

This ruling, likely the most "high-profile" of 2013, provided little analysis, did not directly address the legal arguments against the Controlling Board's expansion, and was issued at 4pm on the Friday before Christmas.

The ruling was in direct contradiction to (1) a state statute mandating that Controlling Board actions be consistent with the intent of the Ohio General Assembly; (2) general principles of governmental separation of powers and checks and balances previously articulated by the Court; (3) constitutional provisions mandating that the Ohio General Assembly alone be responsible for major policymaking decisions; and (4) express limits on Controlling Board authority identified in past court precedents.

Justices French and Kennedy were silent on the ruling. At the end of the decision, a case notation suggests that each Justice "dissents and would dismiss," leaving Ohioans guessing as to their views on this important matter, though indicating that each either viewed the Court as lacking jurisdiction over the issue, or viewed the plaintiffs - - legislators and right-to-life groups - - as lacking standing.

What *is* clear is that neither Justice presented a view skeptical of the majority's vast expansion of executive authority in the face of legislative opposition.

APPENDIX 2: Tally of Top Contributors to Justice French, alongside votes for or against those top contributors

In 2014[30], Justice French received a total of $847,789.20 in campaign donations. In cases where an interest was directly before Justice French, she voted for the interest 39 of 43 times, or 91%. In comparison, when Justice Pfeifer decided cases with these same interests present, he voted in favor of the interest only 21 of 41 times, or 51%.[31] A second comparison is Justice O'Neill, and of the 42 instances in which a French interest was before the Court, Justice O'Neill voted with for the interest only 26 times, or 62%.

Top 20 Contributors to Justice French	Total Number of Times Top Contributors Appeared Before Justice French	Votes in Favor of Top Contributor	Votes Against Top Contributor
1/3/4: Cincinnati Insurance Company/Cincinnati Financial Employees ($42,225), John J. & Thomas R. Schiff & Co. Insurance Employees ($10,925), Schiff Family ($10,800)	**1**	**1**	**0**
2: Lindner Family ($17,500)	**0**	**0**	**0**
3: Boich Family ($10,800)	**0**	**0**	**0**
4: Porter Wright ($10,000)	**4**	**3**	**1**
5: Murray Energy Employees ($9,709.63)	**0**	**0**	**0**
7/10: American Electric Power Employees($8,625)/American Electric Power Committee for Responsible Government ($6,325)	**4**	**3**	**1**
8: Ratner Family ($7,200)	**0**	**0**	**0**
8: Adams Family ($7,200)	**0**	**0**	**0**
8: Schear Family ($7,200)	**0**	**0**	**0**
8/9: Alexander Family (Anthony and Becky)(($7,200)/FirstEnergy PAC FSL ($6,700)	**1**	**1**	**0**
9: Ohio State Farm Agents and Associates PAC ($6,700)	**0**	**0**	**0**
9: Bott Law Group LLC ($6,700)	**-**	**-**	**-**
9: Bricker & Eckler LLP State PAC ($6,700)	**4**	**4**	**0**
9: Carpenter Lipps & Leland LLP ($6,700)	**2**	**2**	**0**
9: Calfee Fund for Good Government ($6,700)	**3**	**3**	**0**
9: Friends of Ohio Hospitals (Ohio Hospital Association) ($6,700)	**3**	**3**	**0**
9: Grange Mutual Casualty Company Ohio PAC ($6,700)	**1**	**1**	**0**
9: Ohio State Medical Association PAC (OSMAPAC) ($6,700)	**3**	**3**	**0**
9: Tiberi For Congress ($6,700)	**-**	**-**	**-**
9: Time Warner Cable PAC ($6,700)	**0**	**0**	**0**

[30] As of the October 3, 2014 filing.
[31] In two cases, Justice Pfeifer did not sit, thus his total is 41 cases.

9: Vorys Sater Seymour and Pease LLP Advocates for Effective Government ($6,700)	**15**	**13**	**2**
9: Ohio Farm Bureau Federation Inc. Agriculture for Good Govt PAC ($6,700)	**1**	**1**	**0**
9: Professional Independent Agents Association of Ohio Inc. Ohio Agents Political Action Committee (OAPAC) ($6,700)	**0**	**0**	**0**
9: Nationwide Mutual Insurance Company PAC ($6,700)	**0**	**0**	**0**
9: K & D Group PAC ($6,700)	**1**	**1**	**0**
9: Motorists Mutual Insurance Company Civic Fund ($6,700)	**0**	**0**	**0**
9: Westfield Employees Federal PAC of Ohio Farmers Insurance Company ($6,325)	**0**	**0**	**0**
Totals	**43**	**39**	**4**

APPENDIX 3: Tally of Top Contributors to Justice Kennedy, alongside votes for or against those top contributors

In 2014[32], Justice Kennedy received a total of $707,826.20 in campaign donations. In cases where an interest was directly before Justice Kennedy, she voted for the interest 36 of 41 times, or 88%. In comparison, when Justice Pfeifer decided cases with these same interests present, he voted in favor of the interest only 19 of 40 times, or 48%.[33] A second comparison is Justice O'Neill, and of the 40 instances in which a Kennedy interest was before the court, Justice O'Neill voted with for the interest only 24 times, or 59%.

Top 20 Contributors to Justice Kennedy	Total Number of Times Top Contributors Appeared Before Justice Kennedy	Votes in Favor of Top Contributor	Votes Against Top Contributor
1: Ohio Republican State and Central Executive Committee ($228,100.74)	**0**	**0**	**0**
2/4: Cincinnati Insurance Company /Cincinnati Financial Employees ($70,859.34) and the Schiff Family ($22,150)	**1**	**1**	**0**
3: Butler County Republican Judicial Fund ($26,600)	**0**	**0**	**0**
5: Boich Family ($21,150)	**0**	**0**	**0**
6: Schramm Family ($13,650)	**0**	**0**	**0**
7: American Electric Power Committee for Responsible Government ($13,025)	**4**	**3**	**1**
7: Ohio State Farm Agents PAC ($13,025)	**1**	**1**	**0**

[32] As of the October 3, 2014 filing.

[33] Justice Pfeifer did not sit in one of the instances in which Justice Kennedy was involved, thus his total, 90, is one less than Justice Kennedy's total of 40.

7: Ohio State Medical Association PAC (OSMAPAC) ($13,025)	**3**	**3**	**0**
7: Time Warner Cable PAC ($13,025)	**0**	**0**	**0**
7: Vorys Sater Seymour and Pease LLP Advocates for Effective Government ($13,025)	**17**	**14**	**3**
8/11/14: FirstEnergy PAC FSL ($13,000)/ FirstEnergy Employees ($11,930.56)/Alexander Family ($10,650)	**1**	**1**	**0**
9: Ohio National Financial Services PAC ($12,650)	**0**	**0**	**0**
10: Oeters Family ($12,000)	**-**	**-**	**-**
12: Professional Independent Agents Association of Ohio Inc. Ohio Agents Political Action Committee (OAPAC) ($11,700)	**0**	**0**	**0**
13: Columbiana County Republican Judicial Fund ($10,700)	**-**	**-**	**-**
13: Calfee Fund for Good Government ($10,700)	**3**	**2**	**1**
15: Murray Energy Corporation PAC ($10,325)	**0**	**0**	**0**
16: Carpenter Lipps & Leland LLP ($10,200)	**3**	**3**	**0**
16: Bricker & Eckler LLP State PAC ($10,200)	**5**	**5**	**0**
17: Friends of John Boehner ($10,000)	**0**	**0**	**0**
17: Ulmer & Berne LLP PAC ($10,000)	**0**	**0**	**0**
17: Timken Good Government Fund ($10,000)	**0**	**0**	**0**
18: Dinsmore & Shohl LLP Employees ($9,800)	**2**	**2**	**0**
19: State Auto Employees Fed PAC Committee of State Automobile Mutual Ins. Co. ($9,325)	**1**	**1**	**0**
20: State Auto Employees Fed PAC Committee of State Automobile Mutual Ins. Co. ($9,100)	**0**	**0**	**0**
Totals	**41**	**36**	**5**

APPENDIX 4: Cases Featuring Justice French's Top Contributors, January 1, 2013 - October 17, 2014

Anderson v. Barclay's Capital Real Estate, Inc., 136 Ohio St.3d 31, 2013-Ohio-1933: French, Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Porter Wright** (for petitioner). O'Neill, Pfeifer dissent.

In re Application of Columbus S. Power Co., 138 Ohio St.3d 448, 2014-Ohio-462: French, Kennedy, Lanzinger, O'Connor, and O'Donnell in favor of **Porter Wright** (for appellee). Pfeifer, O'Neill dissent.

State ex rel. Indus. Energy Users-Ohio v. Pub. Util. Comm., 2013-Ohio- 1472: French, Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Porter Wright** (for respondent). Pfeifer, O'Neill dissent.

In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co., 2014-Ohio-3764: All Justices against **Porter Wright** (for Ohio Power).

In re Application of ***Ohio Power Company***[34], 2014-Ohio-4271: All justices for AEP (Ohio Power), holding that the Public Utilities Commission order permitting Ohio Power to recoup underrecovered transmission costs from all customers over three years was lawful.

In re Fuel Adjustment Clauses for ***Columbus S. Power***[35]***,*** 2014-Ohio-3764: All justices against AEP (Columbus South Power), holding that the Ohio Public Utilities Commission of Ohio decision that a portion of the proceeds Columbus South Power received in a settlement agreement with a fuel supplier should be credited against utility's underrecovery of fuel costs was not unlawful retroactive ratemaking.

In re Application of ***Columbus S. Power Co.***, 138 Ohio St.3d 448: Lanzinger, O'Connor, O'Donnell, Kennedy, and French in favor of **AEP** (Columbus South Power), holding that while AEP revenues totaling $386 million was "unjustified," ordering a refund to customers would be tantamount to retroactive ratemaking. Pfeifer and O'Neill dissented.

State of Ohio ex rel Industrial Energy Users-Ohio v. Public Utilities Commission of Ohio, et al.[36], 2013-Ohio 1472: O'Connor, O'Donnell, Lanzinger, Kennedy, and French granted the motion to dismiss of **Ohio Power Company (AEP)** and the respondents. Pfeifer and O'Neill dissented.

In re Complaint of Smith v. ***Ohio Edison Company***[37]***,*** 2013-Ohio-4070: All justices in favor of Ohio Edison Company (FirstEnergy), holding that the company lawfully disconnected electric service.

Estate of Johnson v. Randall Smith, Inc., 135 Ohio St.3d 440, 2013-Ohio-1507: All Justices in favor of **Bricker** (urging reversal).

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **Bricker** (urging reveral). O'Neill and Pfeifer dissent.

Oaktree Condominium Assn., Inc. v. Hallmark Bldg. Co., 139 Ohio St.3d 264, 2014- Ohio-1937: French, Kennedy, O'Donnell in favor of **Bricker**. O'Neill, O'Connor, Pfeifer, Lanzinger against Bricker.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Bricker**.

*CitiMortgage, Inc. v. Roznowsk*i, 2014-Ohio-1984: French, Kennedy, Lanzinger, O'Connor, O'Donnell, Pfeifer in favor of **Carpenter** (for appellant). O'Neill dissent.

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34 Ohio Power Company is an operating company of AEP.

35 Columbus South Power is an operating company of AEP.

36 The Court granted the motion of Ohio Power Company to intervene as a respondent.

37 Ohio Edison Company is an operating company of FirstEnergy.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Carpenter**.

Freshwater v. Mt. Vernon City School Dist. Bd. of Edn., 137 Ohio St.3d 469, 2013- Ohio-5000: French, Lanzinger, O'Connor, O'Neill in favor of **Calfee** (urging affirmance). Pfeifer, O'Donnell, Kennedy dissent.

Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev., 138 Ohio St.3d 495, 2014- Ohio-1011: French, Kennedy, O'Connor, O'Donnell, Lanzinger, O'Neill in favor of **Calfee** (for appellee). Pfeifer dissent.

State ex rel. K&D Group, Inc. v. Buehrer, 135 Ohio St.3d 257, 2013-Ohio-734: All Justices in favor of **Calfee** (for K&D Group).

Estate of Johnson v. Randall Smith, Inc., 135 Ohio St.3d 440, 2013-Ohio-1507: All Justices in favor of **Ohio Hospital Association**.

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **OHA**. O'Neill and Pfeifer dissent.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **OHA**.

Wolfe v. ***Grange Indemnity Insurance Company, et al.***, 2013-Ohio-5201: O'Connor, O'Donnell, Lanzinger, Kennedy, and French reversed in favor of Grange. Pfeifer and O'Neill dissented.

Estate of Johnson v. Randall Smith, Inc., 135 Ohio St.3d 440, 2013-Ohio-1507: All Justices in favor of **Ohio State Medical Association**.

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **OHSMA**. O'Neill and Pfeifer dissent.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **OHSMA**.

State ex rel. Ebersole v. City of Powell, 2014-Ohio-4283: O'Connor, Pfeifer, O'Donnell, Kennedy, French against **Vorys** (for intervening respondent). Lanzinger and O'Neill dissent in favor of Vorys.

State ex rel. Ebersole v. Delaware County Bd. of Elections, 2014-Ohio-4077: All justices in favor of **Vorys** (for intervening respondent).

FirstMerit Bank, N.A. v. Inks, 138 Ohio St.3d 384, 2014-Ohio-789: All Justices in favor of **Vorys**.

In re Application of Black Fork Wind Energy, L.L.C., 138 Ohio St.3d 43, 2013-Ohio- 5478: French, Kennedy, Lanzinger, O'Connor, O'Donnell, O'Neill in favor of **Vorys**. Pfeifer not present in the case

In re Complaint of Buckeye Energy Brokers v. Palmer Energy Co., 2014-Ohio- 1532: All Justices in favor of **Vorys** (urging reversal).

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **Vorys** (urging reversal). Pfeifer, O'Neill dissent.

Ohio Neighborhood Fin., Inc. v. Scott, 2014-Ohio-2440: All Justices in favor of **Vorys** (urging reversal).

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Vorys** (urging denial).

State ex rel. Doner v. Zehringer, 2014-Ohio-2102: All Justices against **Vorys** (for relators).
State ex rel. Honda of Am. Mfg., Inc. v. Indus. Comm., 2014-Ohio-1894: French, Kennedy, O'Donnell in favor of Vorys. Pfeifer, O'Neill, O'Connor, Lanzinger majority against **Vorys** (for appellant).

Wolfe v. Grange Indemn. Ins. Co., 2013-Ohio 5201: French, Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Vorys** (for appellant). Pfeifer, O'Neill dissent.

Gester v. Worthington Income Tax Bd. of Appeals, 138 Ohio St.3d 76: All Justices in favor of **Vorys** (for appellants).

Snyder v. Ohio Dept. of Natural Resources, 2014-Ohio-3942: Pfeifer, O'Connor, Lanzinger, Kennedy, French, O'Neill for **Vorys** (for appellants). O'Donnell dissent.

Burkhart v. HJ Heinz Co., 2014-Ohio-3766: O'Donnell, O'Connor, Kennedy, French, O'Neill for **Vorys** (urging reversal). Lanzinger not sitting. Pfeifer dissent.

Renfrow v. Norfolk Southern Railway Co., 2014-Ohio-3666: All Justices in favor of **Vorys** (urging reversal).

In re Application of Black Fork Wind Energy, L.L.C., 138 Ohio St.3d 43, 2013-Ohio- 5478, **Ohio Farm Bureau** urging affirmance**:** French, Kennedy, Lanzinger, O'Connor, O'Donnell, O'Neill in favor of Farm Bureau, holding that the Power Sitting Board did not prevent objectors from cross-examining witnesses or presenting evidence, and thus objectors' due process rights were not violated. Pfeifer not sitting.

*State ex rel **K & D Group, Inc.,** v. Buehrer*, 135 Ohio St.3d 257: O'Connor, Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill in favor of K & D Group, holding that evidence was insufficient to show that employer was "successor in interest" of predecessor company, such as to warrant transfer of portion of predecessor's experience rating to employer.

Schill v. Cincinnati Insurance Co., 2014-Ohio-4527: All Justices ruled in favor of Cincinnati Insurance.

APPENDIX 5: Cases Featuring Justice Kennedy's Top Contributors, January 1, 2013 - October 17, 2014

*In re Application of **Ohio Power Company,*** 2014-Ohio-4271: All justices for AEP (Ohio Power), holding that the Public Utilities Commission order permitting Ohio Power to recoup underrecovered transmission costs from all customers over three years was lawful.

*In re Fuel Adjustment Clauses for **Columbus S. Power***, 2014-Ohio-3764: All justices against AEP, holding that the Ohio Public Utilities Commission of Ohio decision that a portion of the proceeds Columbus South Power received in a settlement agreement with a fuel supplier should be credited against utility's underrecovery of fuel costs was not unlawful retroactive ratemaking.

*In re Application of **Columbus S. Power Co.***, 138 Ohio St.3d 448: Lanzinger, O'Connor, O'Donnell, Kennedy, and French in favor of AEP, holding that while AEP revenues totaling $386 million were "unjustified," ordering a refund to customers would be tantamount to retroactive ratemaking. Pfeifer and O'Neill dissented.

State of Ohio ex rel Industrial Energy Users-Ohio v. Public Utilities Commission of Ohio, et al.[38], 2013-Ohio 1472: O'Connor, O'Donnell, Lanzinger, Kennedy, and French granted the motion to dismiss of **Ohio Power Company** and the respondents. Pfeifer and O'Neill dissented.

*Cullen v. **State Farm Mutual Auto. Ins. Co.***, 2013-Ohio-4733: O'Donnell, O'Connor, Kennedy, Lanzinger, McFarland (sitting for French) reversed in favor of insurance companies, holding that review of the certification of a class action requires

[38] The Court granted the motion of Ohio Power Company to intervene as a respondent.

the appellate court to determine whether the trial court conducted a rigorous analysis that resolved all relevant factual disputes. O'Neill and Pfeifer dissented.

Estate of Johnson v. Randall Smith, Inc., 135 Ohio St.3d 440, 2013-Ohio-1507: All Justices in favor of the **Ohio State Medical Association**.

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **OHSMA**. Pfeifer and O'Neill dissent.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All justices in favor of **OHSMA**.

State ex rel. Ebersole v. City of Powell, 2014-Ohio-4283: O'Connor, Pfeifer, O'Donnell, Kennedy, French against Vorys (for intervening respondent). Lanzinger and O'Neill dissent in favor of **Vorys**.

State ex rel. Ebersole v. Delaware County Bd. of Elections, 2014-Ohio-4077: All justices in favor of **Vorys** (for intervening respondent).

Cullen v. State Farm Mutual Automobile Insurance Company, 137 Ohio St.3d 373, 2013 -Ohio- 4733: Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Vorys** (urging reversal). French not sitting. O'Neill, Pfeifer dissent.

FirstMerit Bank, N.A. v. Inks, 138 Ohio St.3d 384, 2014-Ohio-789: All Justices in favor of **Vorys** (urging reversal).

In re Application of Black Fork Wind Energy, L.L.C., 138 Ohio St.3d 43, 2013-Ohio- 5478: French, Kennedy, Lanzinger, O'Connor, O'Donnell, O'Neill in favor of **Vorys** (for intervening appellee). Pfeifer not sitting.

In re Complaint of Buckeye Energy Brokers v. Palmer Energy Co., 2014-Ohio- 1532: All Justices in favor of **Vorys** (for appellee).

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **Vorys** (urging reversal). O'Neill and Pfeifer dissent.

Ohio Neighborhood Fin., Inc. v. Scott, 2014-Ohio-2440: All Justices in favor of **Vorys** (urging reversal).

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Vorys** (urging denial).

State ex rel. Doner v. Zehringer, 2014-Ohio-2102: All Justices against **Vorys** (for relators).

State ex rel. Honda of Am. Mfg., Inc. v. Indus. Comm., 2014-Ohio-1894: French, Kennedy, O'Donnell in favor of **Vorys** (for appellant). Pfeifer, O'Neill, O'Connor, Lanzinger majority against Vorys

State ex rel. Motor Carrier Serv., Inc. v. Rankin, 135 Ohio St.3d 395, 2013-Ohio- 1505: Kennedy, Lanzinger, O'Connor, O'Donnell, O'Neill, and Pfeifer against **Vorys** (for relator). French not sitting.

Wolfe v. Grange Indemn. Ins. Co., 2013-Ohio 5201: French, Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Vorys** (for appellant). Pfeifer, O'Neill dissent.

Gester v. Worthington Income Tax Bd. of Appeals, 138 Ohio St.3d 76: All Justices in favor of **Vorys** (for appellants).

Snyder v. Ohio Dept. of Natural Resources, 2014-Ohio-3942: Pfeifer, O'Connor, Lanzinger, Kennedy, French, O'Neill for **Vorys** (for appellants). O'Donnell dissent.

Burkhart v. HJ Heinz Co., 2014-Ohio-3766: O'Donnell, O'Connor, Kennedy, French, O'Neill for **Vorys** (urging reversal). Lanzinger not sitting. Pfeifer dissent.

Renfrow v. Norfolk Southern Railway Co., 2014-Ohio-3666: All Justices in favor of **Vorys** (for appellants).

In re Complaint of Smith v. ***Ohio Edison Company***[39]***,*** 2013-Ohio-4070: All justices in favor of Ohio Edison Company (FirstEnergy), holding that the company lawfully disconnected electric service.

Freshwater v. Mt. Vernon City School Dist. Bd. of Edn., 137 Ohio St.3d 469, 2013- Ohio-5000: French, Lanzinger, O'Connor, O'Neill in favor of **Calfee** (urging affirmance). Pfeifer, O'Donnell, Kennedy dissent.

Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev., 138 Ohio St.3d 495, 2014- Ohio-1011: French, Kennedy, O'Connor, O'Donnell, Lanzinger, O'Neill in favor of **Calfee** (appellee). Pfeifer dissent.

State ex rel. K&D Group, Inc. v. Buehrer, 135 Ohio St.3d 257, 2013-Ohio-734: All Justices in favor of **Calfee** (for K&D Group).

CitiMortgage, Inc. v. Roznowski, 2014-Ohio-1984: French, Kennedy, Lanzinger, O'Connor, O'Donnell, Pfeifer in favor of **Carpenter** (for appellant). O'Neill dissent.

Cullen v. State Farm Mutual Automobile Insurance Company, 137 Ohio St.3d 373, 2013 -Ohio- 4733: Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Carpenter** (urging reversal). French not sitting. O'Neill, Pfeifer dissent.

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Carpenter** (urging denial).

Cullen v. State Farm Mutual Automobile Insurance Company, 137 Ohio St.3d 373, 2013 -Ohio- 4733: Kennedy, Lanzinger, O'Connor, O'Donnell in favor of **Bricker** (urging reversal). French not sitting. O'Neill, Pfeifer dissent.

Estate of Johnson v. Randall Smith, Inc., 135 Ohio St.3d 440, 2013-Ohio-1507: All Justices in favor of **Bricker** (urging reversal).

Moretz v. Muakkassa, 137 Ohio St.3d 171, 2013-Ohio-4656: French, Kennedy, O'Connor, O'Donnell, Lanzinger in favor of **Bricker** (urging reversal). Pfeifer and O'Neill dissent.

Oaktree Condominium Assn., Inc. v. Hallmark Bldg. Co., 139 Ohio St.3d 264, 2014- Ohio-1937: French, Kennedy, O'Donnell in favor of Bricker (urging affirmance). O'Neill, O'Connor, Pfeifer, Lanzinger majority (against **Bricker**)

State ex rel. Cleveland Right to Life v. State of Ohio Controlling Bd., 138 Ohio St.3d 57, 2013-Ohio-5632: All Justices in favor of **Bricker** (urging denial).

State ex rel. Floyd v. Formica Corporation, 2014-Ohio-3614: All justices in favor of **Dinsmore & Stohl**, holding that evidence supported the Industrial Commission's decision that the claimant abandoned entire job market, as there was no evidence claimant tried to find employment since 2001, and was no longer eligible for benefits.

State ex rel. Smith v. Industrial Commission of Ohio, Appellee; Ohio State University, Appellant, 138 Ohio St.3d 312: O'Donnell, Kennedy, and O'Neill reversed in favor of **Dinsmore**, holding that a statute providing for compensation for injury to eye or ear resulting in loss of sight or hearing did not extend to employee's inability to perceive visual or auditory signals due solely to brain stem injury. O'Connor, Pfeifer, and Lanzinger dissented.

Cullen v. ***State Farm Mutual Auto. Ins. Co.,*** 2013-Ohio-4733: O'Donnell, O'Connor, Kennedy, Lanzinger, McFarland (sitting for French) reversed in favor of insurance companies, holding that review of the certification of a class action requires the appellate court to determine whether the trial court conducted a rigorous analysis that resolved all relevant factual disputes. O'Neill and Pfeifer dissented.

Schill v. Cincinnati Insurance Co., 2014-Ohio-4527: All Justices ruled in favor of Cincinnati Insurance.

[39] Ohio Edison Company is a FirstEnergy operating company.